

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

NICHOLAS M. MOSS,

Petitioner,

vs.

SCOTT FRAKES,

Respondent.

8:20CV474

MEMORANDUM AND ORDER

This matter is before the court on Petitioner Nicholas M. Moss’ “Motion for Copies of Case Files/Transcripts/Court Records” (filing 17) (hereinafter “Motion for Copies”) and Motion for Second Reply Brief (filing 19).

Petitioner’s Motion for Copies is a duplicate of the motion filed by Petitioner on May 26, 2021. (Filing 15.) The court denied Petitioner’s motion without prejudice to reassertion on June 10, 2021. (Filing 16.) From review of Petitioner’s Motion for Second Reply Brief (filing 19), Petitioner intended to include the Motion for Copies as an attachment to the Motion for Second Reply Brief. In any case, the court will deny the Motion for Copies for the reasons stated in its June 10, 2021 Memorandum and Order (filing 16).

In his Motion for Second Reply Brief, Petitioner asks the court to allow him 30 days after the Respondent files his reply brief to file “a Reply to that Reply.” (Filing 19.) Petitioner seeks to file a second reply because he had not received a ruling on his Motion for Copies by the time he submitted his brief in response (filing 18) to Respondent’s Answer (filing 13) and Brief (filing 14).¹ Petitioner

¹ The certificate of service on Petitioner’s brief in response and Motion for Second Reply Brief indicate he mailed the materials on June 11, 2021. (Filing 18 at CM/ECF p. 45; Filing 19 at CM/ECF p. 2.) The court’s Memorandum and Order (filing 16) denying Petitioner’s Motion for Copies was mailed on June 10, 2021, so the court assumes

states that he “is unable to correctly finish his reply brief” without the materials requested in his Motion for Copies which he feels “will further develop the record and give this Court a sufficient record to rule on.” (Filing 19.)

As the court explained in its previous Memorandum and Order, Petitioner has failed to demonstrate a sufficient need for the nearly 2000 pages of records he requested. Respondent has provided Petitioner with copies of the specific pages of the designated record that are cited in Respondent’s Answer and Brief in Support of Answer (*see* filing 14 at CM/ECF p. 43) as required by the court’s Progression Order (filing 6). Respondent was not required to provide complete copies of all records to Petitioner. Respondent has filed complete copies of all the records identified in the Designation of State Court Records in Support of Answer (filing 10) with the court, and the court will review the complete records in assessing the merits of Petitioner’s habeas petition. In addition, Petitioner has filed a 45-page brief in response that addresses his habeas claims and the alleged inaccuracies in Respondent’s brief. (*See* Filing 18 at CM/ECF pp. 4–7.) Thus, upon careful consideration, Petitioner’s motion to file a second reply will be denied.

IT IS THEREFORE ORDERED that:

1. Petitioner’s Motion for Copies (filing 17) is denied as duplicative of his previous motion (filing 15) and for the reasons stated in the court’s June 10, 2021 Memorandum and Order (filing 16).
2. Petitioner’s Motion for Second Reply Brief (filing 19) is denied.
3. Respondent has until July 16, 2021 to file and serve his reply brief. If Respondent elects not to file a reply brief, he should inform the court of such and that the merits of the petition are therefore fully submitted for decision.

Petitioner has received notice of the ruling as of the date of this order. (*See* Docket Sheet.)

4. The Clerk of Court is directed to set a pro se case management deadline using the following text: **July 16, 2021**: Respondent's reply brief due.

Dated this 17th day of June, 2021.

BY THE COURT:

Richard G. Kopf
Richard G. Kopf
Senior United States District Judge